* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

12. Date of decision : August 23, 2007

\+ **ITA No. 465 of 2006**

COMMISSIONER OF INCOME TAX ..... Appellant
Through Ms. P.L.Bansal, Advocate.

versus

G.G.MEDICAL HEALTH CARE LTD. ..... Respondent
Through Ms. Manita Verma, Advocate.

CORAM:
HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE DR. JUSTICE S.MURALIDHAR

O R D E R

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1. This appeal is directed against the order dated 18.5.2005 passed by the Income Tax Appellate Tribunal ('Tribunal') in ITA No. 2786(Del) 79 for the Assessment Year 1993-94. The Tribunal dismissed the appeal filed by the Department and affirmed the order dated 24.3.1999 passed by the Commissioner of Income Tax (Appeals) ['CIT (A)'] whereby he had deleted the addition of Rs.33,30,301 made on protective basis.

2. For the Assessment Year in question the Assessee's income was assessed at a loss of Rs.7,34,190. The Assessing Officer ('AO') in his order noted that the ACIT had informed the AO by a letter dated 22.3.1996 that the Assessee had received a commission of Rs. 13,26,801 from Inter Kardio (P) Ltd for the year 1993-94. However the Assessee denied having received any such commission. The Assessee also denied that a current account had been opened with the Bank of Rajasthan on 6.11.1992 in its name as had been claimed by Inter Kardio (P) Ltd. It appears that while framing the Assessment for Inter Kardio (P) Ltd, it had been claimed by the said Assessee [Inter Kardio (P) Ltd] that it had paid the aforementioned amount by cheque to the Assessee here

(G.G.Medical Health Care Limited). The AO accordingly added the sum of Rs. 13,26,801 as income of the Assessee for the Assessment Year 1993-94. Since the copy of the bank account No. 4380 with the Bank of Rajasthan, in the Assessee's name showed that a sum of Rs.33,30,301 (inclusive of the commission of Rs.13,26,801) had been credited, the AO added the said amount to the income of the Assessee "on protective basis."

3. The CIT (A) by order dated 24.3.1999 found that the Respondent here had not only denied receipt of commission but also the opening of the current account in which commission had been deposited. Further the Respondent had also filed an FIR with the Karol Bagh Police Station against the fraudulent opening of the bank account No. 4380 in its name with the Bank of Rajasthan and that it had asked bank to get the fraud unearthed. Accepting this explanation, the CIT (A) held that the addition of Rs.33,30,301 was not justified "even on protective basis" and accordingly directed the addition to be deleted.

4. By the impugned order dated 18.5.2005, the Tribunal rejected the appeal filed by the Department on the ground that nothing had been found to connect the Assessee with the payment of the commission. It took note of the fact that in the order for the subsequent Assessment Year 1994-95, the Assessing Officer ('AO') mentioned that a letter had been written to the Deputy Commissioner of Income Tax ('DCIT'), Circle II, enquiring about the fate of the commission paid to the Assessee by Inter Kardio Pvt. Ltd as disclosed by the latter under the Voluntary Disclosure of Income Scheme ('VDIS') in respect of which a Circular had been issued on 19.11.1997. The DCIT by a letter dated 7.3.2001 informed the AO that the following income had been disclosed by

M/s. Inter Kardio (P) Ltd:

> "Rs. 17,26,801 for asstt. year 1993-94 as commission paid;
> Rs. 7,04,930 for asstt. year 1994-95 as commission paid;
> Rs. 5,88,035 for asstt. year 1995-96 as commission paid;
> Rs. 12,14,341 for asstt. year 1995-96 as commission paid."

The Tribunal after discussing the facts noted that bank account was disowned by the Assessee. Since nothing incriminating against the Assessee had been brought on record, the Tribunal agreed with the CIT (A) that the addition of Rs.33,30,301 had to be deleted.

5. After hearing learned counsel for the Revenue at some length, this Court is not inclined to interfere with the impugned order of the Tribunal. Although Inter Kardio (P) Ltd by their letter dated 14.3.2001 informed the AO they had paid Rs.2,37,556 to the Assessee out of total commission of Rs.7,04,930 during the Assessment Year 1994-95 there is nothing to indicate that the said amount was in fact paid to the Assessee. This Court also finds that, consistent with its plea that the bank account in question was fraudulently opened in its name with the Bank of Rajasthan, the Assessee has lodged an FIR with the Police Station, Karol Bagh.

6. This Court finds no reason to interfere with the impugned order of the Tribunal. No substantial question of law arises.

7. The Appeal is dismissed.

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MADAN B. LOKUR, J

sd/-
S.MURALIDHAR, J

AUGUST 23, 2007

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